


## City of Alexandria, Virginia

## MEMORANDUM

DATE: JUNE 27, 2005

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER 

SUBJECT: SUP ENFORCEMENT PROCESS AND PROCEDURES

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City Council has asked staff to describe the process and procedures by which it enforces conditions of approved Special Use Permits (SUPs).

The Department of Planning and Zoning is responsible for enforcing the Zoning Ordinance, including SUPs approved by Council. Enforcement of SUPs is done concurrently through two parallel processes of proactive enforcement and enforcement based on citizen complaints. The Department employs two zoning inspectors as part of the Land Use Services Division who are responsible for zoning enforcement through these parallel processes.

The proactive SUP enforcement process involves 1) an initial inspection of the use; 2) a one year inspection; and 3) an inspection when a change in ownership or amendment occurs. In addition, the Department of Planning and Zoning recently initiated a three year SUP review process to ensure that at least every three years there will be a review of the approximately 2,000 Special Use Permits on record. This enables the City to review the older, long standing SUPs. We also conduct directed comprehensive enforcement of certain uses such as gas stations, fast food restaurants and roominghouses. Each of these inspections ensure that conditions of approved SUP's are checked on a regular basis.

**General SUP Enforcement**

Historically, the City has employed a complaint based system for enforcement. Under that system, staff investigates each complaint by citizens who contact the City with information about a zoning violation. Typically, a property will be inspected to verify the complaint and, if required, the history and zoning rules researched. If a zoning violation is found, the office is authorized and does issue tickets and fines.

In regard to SUP enforcement as a result of reported violations, since the beginning of 2004, the Department of Planning and Zoning has received a total of 484 reports of zoning violations. Of these, 38 (less than 8% of all reported violations) have been reports of violations of SUP conditions. These violations vary from live entertainment beyond permitted hours in a restaurant to parking of used cars in an unauthorized location. The vast majority of these

violations have been resolved by notifying the SUP violator, reinspecting and verifying compliance with the conditions. While staff has the ability to assess fines for SUP violations up to \$500 for a third violation and up to a maximum of \$3,000 for any single violation, staff has not had to use this tool over the past year, since most violations are resolved voluntarily.

### **Enhanced SUP Enforcement**

For SUPs approved during the past 10 + years, staff has added a series of enhanced features to the City's historical SUP system, all designed to augment the enforcement of SUP conditions and supplement the complaint based system.

#### *Initial Inspection.*

The SUP enforcement process starts immediately after a SUP is approved by City Council. After approval and before the issuance of a Certificate of Occupancy, Planning staff conduct an inspection of the property. The purpose of this initial inspection is twofold: to make sure that the SUP holder is aware of all of the conditions of the approved SUP and to visibly assure that any pre-occupancy conditions are adhered to (parking, signage, building improvements, landscaping, etc.)

#### *One Year Review condition.*

SUPs approved in the last 10 years have included one or more conditions requiring a review for compliance with conditions. It is one of the most important standard conditions and typically requires a review by P&Z after the use has been operational for one year. The SUP review that takes place involves the applicant and staff from each of the departments involved in the case. The SUP site is inspected and any outstanding matters are resolved.

If problems are uncovered as a result of the review, then staff typically works with the applicant to resolve them, as applicants are, in the vast majority of cases, interested in complying with conditions. On the other hand, if there are problems with noncompliance, staff will not hesitate to issue tickets and fines when voluntary compliance does not occur.

SUP violations which are not corrected immediately, which constitute repeat violations, or which create a direct and immediate adverse impact on the surrounding community require that the SUP be brought back for public hearings before the Planning Commission and Council. An SUP can also be docketed if the Planning and Zoning Director receives a complaint that rises to the level of a violation of the permit conditions or if the director has determined that there are problems with the operation of the use and that new or revised conditions are needed.

#### *Change of ownership/amendments*

In addition to the above inspections, if there is a change in ownership of a use which has been granted a SUP, Planning and Zoning will inspect the SUP prior to approving the change of ownership. If there are violations that are not resolved, the SUP can be docketed for public hearing by the Planning Commission and City Council.

### *Specialized Proactive Enforcement*

The Department of Planning and Zoning conducts specialized proactive enforcement of SUPs, including inspections of gas stations, fast food restaurants and roominghouses. This specialized enforcement has sometimes concentrated on areas of the City where there has been a history of repeated violations.

### *Revocation of SUPs*

The Director is authorized to, and has in the past, issued an order requiring that an event, activity or business cease, and has called on the Police to assist with ensuring compliance with that order. The Director is also authorized to docket an SUP for revocation when the seriousness of uncorrected violations warrants. Revocation is not taken lightly and is primarily for those uses where there are egregious violations or where normal enforcement efforts have yielded little or no cooperation from the violator. Council has considered SUP revocation cases in a few occasions over the past 10 years, including for the Pines of Florence restaurant in Fox Chase Shopping Center (SUP revoked) and the Afghan Restaurant on Route 1 (SUP not revoked).

### **New Three Year Proactive SUP Enforcement Program**

In addition to the initial and one year SUP inspections, the Department recently has instituted a three year SUP inspection cycle. The purpose of the three-year inspections is to make sure that, at least once every three years after a SUP is approved, it is reviewed for compliance with all conditions. If there are documented violations found as a result of a three-year inspection, staff will seek voluntary compliance by the applicant. It will issue tickets and fines if necessary and take other appropriate steps. Staff has established a procedure for three year SUP inspections which outlines the steps to be taken as part of the three year SUP enforcement program. The three-year inspection approach will assist in uncovering violations of SUPs approved prior to the City's recent SUP system, which has proved to be a successful enforcement program, and will create a proactive system of enforcement for SUP conditions.

Staff believes that these parallel and enhanced efforts will address the issue and enable the City to identify violations with respect to the much older, long standing SUPs. This combination of efforts will ensure continued enforcement of SUP conditions.

### **STAFF:**

Eileen Fogarty, Director, Planning and Zoning

Richard Josephson, Deputy Director, Planning and Zoning